

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND**

PETER J. BIBBY

v.

C.A. NO. 07-463 S

DAVID PETRUCCI, ET AL.

MEMORANDUM AND ORDER

Jacob Hagopian, Senior United States Magistrate Judge.

Presently before the Court is a Motion for Leave to Appeal *In Forma Pauperis* filed by plaintiff Peter J. Bibby, *pro se* (Docket # 87). This matter has been referred to me for determination. For the reasons stated below, plaintiff's motion is hereby GRANTED.

BACKGROUND

Plaintiff filed a Complaint on or about December 14, 2007, alleging that defendants had violated his constitutional rights (Docket #1). Plaintiff simultaneously filed a Motion for Leave to Proceed *In Forma Pauperis* (Docket #2), which was granted on November 14, 2008 (Docket #6).

On November 3, 2008, defendants filed a Motion for Summary Judgment (Docket #59), which was granted on July 22, 2009 (Docket #82). Judgment in favor of defendants was thereafter entered on July 23, 2009 (Docket #83). Plaintiff filed a Motion for Relief from Order/Judgment and Reconsideration pursuant to Rule 60(b) of the Federal Rules of Civil Procedure on or about July 31, 2009 (Docket #84). Defendants opposed plaintiff's motion (Docket #85). Thereafter, plaintiff filed a Notice of Appeal, along with the instant Motion for Leave to Appeal *In Forma Pauperis*, received by the Court on August 24, 2009 (Docket #86).¹

¹Although plaintiff's Rule 60(b) Motion for Relief has not yet been decided, as plaintiff's notice of appeal will become effective automatically when the order regarding the Rule 60 motion is entered, I address plaintiff's motion for leave to appeal *in forma pauperis* here. See Fed.R.App.P. 4(a)(4)(B)(i) (stating, in relevant part, that if a party files a notice of appeal after the court enters a judgment, but before it disposes of a Rule 60 motion regarding the same, the notice becomes effective to appeal the judgment upon entry of the order disposing of the Rule 60 motion).

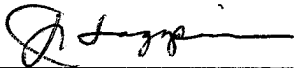
DISCUSSION

A prisoner may seek to appeal a judgment in a civil action without prepayment of fees pursuant to 28 U.S.C. § 1915 (a). Additionally, Rule 24 of the Federal Rules of Appellate Procedure provides:

“a party who was permitted to proceed in forma pauperis in the district-court action...may proceed on appeal in forma pauperis without further authorization, unless (A) the district court...certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis... or (B) a statute provides otherwise.”

Fed.R.App.Proc. 24(a)(3). I have reviewed plaintiff's Motion for Leave to Appeal *In Forma Pauperis*. Plaintiff's inmate trust account statement indicates his continuing inability to pay the required fees. Further I have not found that plaintiff (i) has not taken his appeal in good faith or (ii) is not otherwise entitled to proceed *in forma pauperis*. Accordingly, plaintiff's Motion for Leave to Appeal *In Forma Pauperis* is hereby **GRANTED**.

IT IS SO ORDERED.



Jacob Hagopian
Senior United States Magistrate Judge
September 8, 2009